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SMALL ENTITY COMPLIANCE GUIDE

Transforming the 2.5 GHz Band

FCC 19-62

WT Docket No. 18-120

Released July 11, 2019

This Guide is prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the revised rules adopted in the above-referenced Federal Communications Commission (FCC or Commission) rulemaking dockets. This Guide is not intended to replace or supersede these rules, but to facilitate compliance with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide cannot anticipate all situations in which the rules apply. Furthermore, the Commission retains the discretion to adopt case-by-case approaches, where appropriate, that may differ from this Guide. Any decision regarding a particular small entity will be based on the statute and any relevant rules.

In any civil or administrative action against a small entity for a violation of rules, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation. The FCC will then consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or it may clarify or update the text of the Guide. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

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I. OBJECTIVES OF THE PROCEEDING

In this *2.5 GHz Report and Order* in FCC 19-62, WT Docket No. 18-120, released on July 11, 2019,¹ the Commission revised the regulatory framework governing the 117.5 MHz of spectrum in the 2.5 GHz (2496-2690 MHz) band formerly referred to as the Educational Broadband Service (EBS). First, the Commission eliminated a number of restrictions that previously limited the use of that spectrum. Specifically, the Commission eliminated the (1) EBS eligibility requirements; (2) EBS educational use requirements; and (3) EBS leasing restrictions. In addition, the Commission (1) adopted a Tribal Priority Window for unassigned 2.5 GHz spectrum over Tribal areas; (2) adopted a competitive bidding process for other unassigned 2.5 GHz spectrum; (3) adopted new performance requirements for 2.5 GHz licenses granted through the Tribal Priority Window and the competitive bidding process; and (4) adopted new renewal standards for EBS licenses. The decisions made in this *2.5 GHz Report and Order* will make valuable mid-band spectrum available - including to those in rural Tribal areas, for the mobile services on which consumers increasingly rely and which is critical to maintaining American leadership in the next generation of wireless connectivity.

II. COMPLIANCE REQUIREMENTS

A. Streamlined Compliance Requirements²

- In the *2.5 GHz Report and Order* the Commission has streamlined compliance requirements for the 2.5 GHz band by eliminating several compliance requirements.
 - The Commission has eliminated former Section 27.1201 of the Rules which limited eligibility for EBS licenses.
 - Both incumbent EBS licenses and new EBS licenses once issued, will be free of the eligibility restrictions, and EBS licensees may assign or transfer their licenses freely.
 - The Commission has also eliminated Section 27.1203 of the Rules which set forth the EBS educational use requirements.
 - Licensees holding licenses in the 2.5 GHz band, whether obtained before or after the adoption of the *Report and Order*, will not be required to use these licenses to fulfill an educational mission, although they are still permitted to do so.
 - The Commission has revised Sections 1.9020, 1.9030, and 27.1214 of its Rules and eliminated Section 1.9047 of its Rules to remove restrictions on the leasing of EBS licenses.
 - § 1.9020 & 1.9030 - Spectrum lessees entering into a spectrum leasing arrangement involving an EBS licensee are no longer required to comply with the eligibility requirements that pertained to such a licensee and that have been eliminated in the *Report and Order*.

¹ *Transforming the 2.5 GHz Band*, Report and Order, 34 FCC Rcd 5446 (2019) (*2.5 GHz Report and Order*).

² See *2.5 GHz Report and Order*, 34 FCC Rcd at 5450-59, paras. 14-35.

- § 27.1214 - The revised section maintains provisions applicable for EBS grandfathered leases while deleting all other provisions.
- § 1.9047 - EBS Licensees are no longer required to comply with special provisions relating to leases of educational broadband service spectrum.

B. Tribal Priority Filing Window (47 CFR § 27.1204)³

- The Commission has adopted a window filing process for new 2.5 GHz licenses over Tribal Lands.
- The Tribal priority window will open before we make unassigned EBS spectrum generally available to all entities through competitive bidding.
- Licenses will only be granted for currently unassigned spectrum, although licensees may be granted overlay rights.
- Applicants are limited to federally recognized American Indian tribes or Alaska Native Villages, entities majority owned and controlled by federally recognized American Indian tribes or Alaska Native Villages or consortia comprised only of federally recognized American Indian tribes or Alaska Native Villages.
- Applications are limited to Tribal Lands, which is defined to be any Federally recognized Indian Tribe's reservation, pueblo or colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act, Indian Allotments, Hawaiian Homelands and any lands designated as Tribal lands pursuant to the designation process contained in Section 54.412 of our rules prior to July 10, 2019.
- The Tribal Lands must be rural which is defined to be lands that are not part of an urbanized area or urban cluster area with a population equal to or greater than 50,000.
- The applicant must also demonstrate local presence on the Tribal land.
- In accordance with the process used by the Commission for competitive bidding and with our notice and comment requirements, the Wireless Telecommunications Bureau (WTB) will announce procedures for the Tribal priority window through one or more Public Notices and other appropriate outreach to potentially eligible Tribal applicants.
- The Tribal priority filing window for applicants opened on February 3, 2020 and will close on August 3, 2020.⁴
- Applicants can access information about the Tribal priority filing window⁵, workshops⁶, application procedures⁷, and other related information at www.fcc.gov/RuralTribalWindow.

C. Geographic Service Area (GSA) and the Band Plan for New Licenses (47 CFR § 27.1206, 47 CFR § 27.1207)

- Geographic Area (47 CFR § 27.1206)

³ See *2.5 GHz Report and Order*, 34 FCC Rcd at 5463-69, paras. 47-65.

⁴ See *Federal Communications Commission Announces 2.5 GHz Rural Tribal Window and Technical Workshop, Transforming the 2.5 GHz Band*, WT Docket No. 18-120, Public Notice, 34 FCC Rcd 11138 (2019).

⁵ *Id.*

⁶ *Id.*

⁷ See *Wireless Telecommunications Bureau Announces Procedures for 2.5 GHz Rural Tribal Priority Window, Transforming the 2.5 GHz Band*, WT Docket No. 18-120, Public Notice, 35 FCC Rcd 308 (2020).

- For EBS licenses issued in the Tribal Priority Window, the GSA consists of the rural Tribal land (as defined in § 27.1201(b)(2)) specified in the application.
- For all other new initial licenses issued after April 27, 2020, the GSA is the county for which the license is issued, subject to the exclusion of overlapping, co-channel incumbent GSAs.
- Band Plan (47 CFR § 27.1207)
 - The Band Plan adopted in the Report and Order includes three overlay licenses.
 - The first license will include channels A1-A-3, B1-B3, C1-C3 (49.5 MHz).
 - The second license will include channels D1-D3, the J channels, and channels A4-G4 (50.5 MHz).
 - The third license channels G1-G3 and the relevant EBS K channels (16.5 megahertz of contiguous spectrum and 1 megahertz of the K channel associated with the G channel group).

D. Competitive Bidding Procedures (47 CFR §§ 27.1217, 27.1219⁸)

- Any remaining unassigned EBS spectrum will be made available for commercial use via competitive bidding immediately following the completion of the Tribal priority filing window.
- The Commission has adopted its Part 1 competitive bidding procedures governing among other things, competitive bidding design, designated entity provisions, unjust enrichment, application and payment procedures, reporting requirements, and the prohibition on certain communications between auction applicants, for unassigned 2.5 GHz spectrum in the 117.5 MHz formerly known as EBS.
- Bidding Credits will be available as follows:
 - A qualifying “small business” or a consortium of “small businesses” – those with gross revenues for the preceding five years not exceeding \$55 million – will be provided with a bidding credit of 15%.
 - A qualifying “very small businesses” or a consortium of “very small businesses” – those with average annual gross revenues for the preceding five years not exceeding \$20 million – will be provided with a bidding credit of 25%.
 - A qualifying rural service provider - who has not claimed a small business bidding credit and who serves predominantly rural areas that have fewer than 250,000 combined wireless, wireline, broadband and cable subscribers - will be provided with a bidding credit of 15%.

E. Construction Performance Requirements (47 CFR § 27.14(u))⁹

- The *Report and Order* maintains the existing construction requirements for Broadband Radio Service (BRS) licenses and for EBS licenses issued prior to October 25, 2019.
- For new licenses issued after October 25, 2019, pursuant to the Tribal Priority Window, such licensees providing mobile or point-to-multipoint service must make an interim showing within two years of license grant demonstrating reliable signal coverage of 50 percent of the population of the geographic service area, and a final showing to 80 percent within five years.

⁸ See 2.5 GHz Report and Order, 34 FCC Rcd at 5472-83, paras. 75-100.

⁹ See 2.5 GHz Report and Order, 34 FCC Rcd at 5483-86, paras. 101-109.

- Such licensees providing fixed point-to-point service must make an interim showing of operation of one link for each 50,000 persons in the geographic service area within two years of initial license grant, and a final showing of operation of one link for each 25,000 persons in the geographic service area within five years of initial license grant.
- Licensees that do not meet their interim requirement will have the deadline for their final showing advanced by one year.
- For new licenses issued after October 25, 2019, other than licenses issued in the Tribal Priority Window, such licensees providing mobile or point-to-multipoint service must make an interim showing within four years of license grant demonstrating reliable signal coverage of 50 percent of the population of the geographic service area, and a final showing to 80 percent within eight years.
 - Such licensees providing fixed point-to-point service must make an interim showing of operation of one link for each 50,000 persons in the geographic service area within four years of initial license grant, and a final showing of operation of one link for each 25,000 persons in the geographic service area within eight years of initial license grant.
 - Licensees that do not meet their interim requirement will have the deadline for their final showing advanced by two years.
- Licenses will automatically terminate without Commission action if licensees do not meet their final performance requirement.

F. Renewal Standards (47 CFR § 27.1205)¹⁰

- The unified regulatory framework of the Wireless Radio Services (WRS) will apply to new and existing EBS licenses, including those licensed through the Tribal Priority Window and competitive bidding.
- Existing EBS licensees will be subject to the same renewal standards, however the old, substantial service build-out standard contained in section 27.14(o) of the Commission's rules will apply to existing license renewals, unless the Commission alters the WRS build-out standards upon renewal.

III. RECORDKEEPING AND REPORTING REQUIREMENTS

The rules adopted in the *2.5 GHz Report and Order* will impose new or additional reporting or recordkeeping obligations on small entities.

- Applicants filing in the Tribal Priority Window will be required to submit documentation demonstrating that they are eligible to file in the window. (47 CFR § 27.1204)
- Licensees will be required to submit documentation to demonstrate that they meet construction requirements. (47 CFR § 27.14(u))

¹⁰ See *2.5 GHz Report and Order*, 34 FCC Rcd at 5486-88, paras. 110-112.

- Licensees will be required to submit documentation to demonstrate that they meet renewal standards. (47 CFR § 27.1205)

IV. IMPLEMENTATION DATE

The rules in the *2.5 GHz Report and Order*, with the exception of Sections 27.14(u) and 27.1204 will become effective on April 27, 2020. Sections 27.14(u) and 27.1204, which relate to construction requirements and the Tribal Priority window, became effective on November 25, 2019, following approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The Tribal priority filing window for applicants opened on February 3, 2020 and will close on August 3, 2020. The process and procedures for submitting applications in the 2.5 GHz Rural Tribal Priority Window were issued on January 6, 2020.

V. INTERNET LINKS

A copy of the *2.5 GHz Report and Order* is available at:

<https://docs.fcc.gov/public/attachments/FCC-19-62A1.pdf>

A copy of the Federal Register Summary of the *2.5 GHz Report and Order* is available at:

<https://www.govinfo.gov/content/pkg/FR-2019-10-25/pdf/2019-22511.pdf>

[A copy of the Public Notice announcing the Tribal](#) priority filing window and technical workshop is available at: <https://docs.fcc.gov/public/attachments/DA-19-1226A1.pdf>.

[A copy of the Public Notice announcing the Tribal](#) priority filing window application submission procedures is available at: <https://docs.fcc.gov/public/attachments/DA-20-18A1.pdf>.

The FCC's website providing information on the Tribal priority filing window, workshops and other related information is available at: www.fcc.gov/RuralTribalWindow.